UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CSC HOLDINGS, LLC	
and	**Case 29-CA-190108**
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO	

CSC HOLDINGS, LLC'S FACTUAL AND LEGAL EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE KENNETH W. CHU'S DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, CSC Holdings, LLC ("Respondent or the "Company") respectfully submits the following exceptions to the April 27, 2018 Decision of Administrative Law Judge Kenneth W. Chu.[1]

Respondent excepts:

1. To the legal conclusion that the General Counsel established a prima facie case under *Wright Line* "showing that Wills' union and concerted activity was a motivating factor in the Respondent's decision to discharge him", (D.28, L.41-45), as such conclusion is contrary to the record as a whole and contrary to established Board law. (*See* Exceptions 2, 3, 4, 5, 6, 7, 8, and 9.)

2. To the finding that "Respondent had knowledge of such [union] activities prior to terminating Wills", (D. 26, L. 22-23), and finding that "Respondent, through its managers and human resources personnel, were aware of his protected activity prior to terminating him", (D. 28,

[1] References to the ALJ's Decision are identified by page and line numbers, as "D.____, L.____." References to the hearing transcript are identified by the official transcript page number, as "Tr.___." In most if not all cases there are multiple Record citations that support each exception.

L. 40-41), as such findings are not specific to the sole individual who made the decision to terminate Wills' employment, contrary to the record as a whole, and contrary to established Board law. (Tr. 799-800, 746, 787, 612, 686-87, 747, 804.)

3. To the finding that discredits the denial of Vice President of Outbound Telemarketing and Direct Sales, Daniel Ferrara, of having any knowledge of Wills' union activities, (D. 28, L. 8-10), as such finding is contrary to the record as a whole and contrary to established Board law. (Tr. 687, 746, 785-87, 800, 804, 810-11.)

4. To the factual finding and conclusion that "[i]t is reasonable that Ferrera[2] would have been made aware of Wills' union activity in Jericho by the other supervisors, especially during the time that the Union was organizing the Jericho employees", (D.28, L.11-13), as such finding and conclusion is contrary to the record as a whole and contrary to established Board law. (Tr. 785, 167-71, 799-800, 746, 787, 612, 686-87, 747, 804.)

5. To the factual finding and conclusion that "[i]t is not reasonable to believe that Ferrera would not recall reading" in the Boss timeline a comment attributed to Wills – namely, Wills' question "what are we supposed to do? Take it in the ass?" – that occurred just prior to Wills' termination, (D.28, L.13-18), as such finding and conclusion is contrary to the record as a whole and contrary to established Board law. (Tr. 647, 825, 810-11) (GCX 18.)

6. To the factual finding and conclusion that "although Pero did not specifically recall, he nevertheless testified that he may have informed Ferrera that employees were talking about the Union in the Hauppauge office", (D. 28, L. 18-20), as such finding and conclusion is contrary to the record as a whole and contrary to Pero's testimony that he did not give Ferrara a "specific name" of any employee who may have been discussing the union. (Tr. 776-77.)

[2] The ALJ referred to Daniel Ferrara as "Ferrera" throughout the decision. (Tr. 784) Respondent further excepts to the misspelling of his name and requests his name be corrected.

7. To the failure to analyze as part of the Charging Party's prima facie case the "remaining question [] whether the Respondent terminated Wills because of discriminatory animus", (D. 28, L. 43-44), as such omission is contrary to established Board law. (*See* Exceptions 1-34.)

8. To the finding and conclusion that "Pero was not happy with Wills' opposition to keep everything positive at the boost meeting and felt the need to inform Simon that Wills was disrespectful and insubordinate", (D. 27, L. 5-8), as such finding and conclusion is contrary to the record as a whole. (Tr. 98, 302, 735-36.) (GCX 5.)

9. To the conclusion of law "that the General Counsel has made a prima facie showing that Wills' union and concerted activity was a motivating factor in the Respondent' decision to discharge him", (D. 26, L. 25-26), as such conclusion is contrary to the record as a whole and based on erroneous factual findings and misapplication of Board law. (*See* Exceptions 1-34.)

10. To the finding and conclusion that the nondiscriminatory reasons for the discharge of Wills – namely, "his failure or refusal to adhere to company policy and procedures and his insubordination towards supervisors and managers" – "are without merit", (D. 29, L. 32-33), as such finding and conclusion is contrary to the record as a whole and contrary to established Board law. (*See* Exceptions 1-34.)

11. To the finding and conclusion that "that Wills' participation in union activities was the triggering factor for his termination" and that "close review of the investigation taken after the Zimmermann incident shows the reason for his discharge is pretext for the Respondent's animus towards Wills' support and activities on behalf of the Union", (D. 30, L. 21- 24), as such finding and conclusion is contrary to the record as a whole and contrary to established Board law. (*See* Exceptions 1-34.)

12. To the finding and conclusion that two months "timing represents significant evidence of unlawful motivation", (D. 33, L. 10), as such finding and conclusion is contrary to the record as a whole and contrary to established Board law. (*See* Exceptions 13-34.)

13. To the finding that that "the timing of the discharge, shortly after he voiced support for CWA and began assisting in the Union organizing, at the Jericho and Hauppauge offices, also establishes an inference that the Respondent's discharge was motivated by Wills' union activity in support for the CWA", (D. 33, L. 1-5), as such finding is contrary to the record as a whole and contrary to established Board law. (*See* Exceptions 13-34.)

14. To the finding that a two-month "coincidence in time between Respondent's knowledge of the employee's union activity and his discharge is strong evidence of an unlawful motive for his discharge", (D. 33, L. 9-12), as such finding is contrary to the record as a whole and contrary to established Board law. (*See* Exceptions 13-34.)

15. To the finding that Wills and Ulysses Colon were "similarly situated", (D. 32, L. 21-23), as such finding is contrary to the record as a whole and contrary to established Board law. (Tr. 201-202, 204-05, 207, 360, 538, 567, 548, 550, 576-92, 734, 762, 788, 736-37, 800.) (RX 2, 4, 5, 14, 17, 18, 19, 21, 24, 25, 32; GCX 5, 6, 35, 20.)

16. To the finding that "Colon continued to commit violations of company policy before and after his final warning with no severe discipline other than counseling or a coaching memo", and "[i]n contrast, Wills, with similar behavior, was discharged," (D. 32, L. 21-23), as such findings are contrary to the record as a whole and contrary to established Board law. (Tr. 201-202, 204-05, 207, 360, 538, 567, 548, 550, 576-92, 692-93, 734, 762, 788, 736-37, 800.) (RX 2, 4, 5, 14, 17, 18, 19, 21, 24, 25, 32; GCX 5, 6, 35, 20.)

17. To the finding and conclusion that "the disciplinary treatment of Wills was glaringly disparate compared to another sales representative who had continually violated company policy and shown disrespect/insubordination towards a supervisor", (D. 32; L. 3-5), as such finding and conclusion is contrary to the record as a whole and contrary to established Board law. (Tr. 201-202, 204-05, 207, 360, 429-30, 538, 567, 548, 550, 576-92, 734, 762, 788, 736-37, 800.) (RX 2, 4, 5, 9, 10, 12, 14, 17, 18, 19, 21, 24, 25, 27, 32; GCX 5, 6, 35, 20.)

18. To the finding and conclusion that the Company failed to strictly enforce its policy related to the use of phones during boost meetings, (D. 31), as such finding and conclusion is contrary to the record as a whole. (Tr. 429, 430-31, 378, 440.) (RX. 14, 15; GCX 10.)

19. To the conclusion that the Company "failed to follow its own practice in disciplining Wills", (D. 31, L. 32), as such conclusion is contrary to the record as a whole and contrary to established Board law. (Tr. 29-30, 244-56, 661, 719-20, 360, 347, 734-35, 736-38, 740, 762, 748, 644, 600-01, 692-93.) (RX 1, 2, 4, 6, 17, 18, 19, 25; GCX 5, 6, 11.)

20. To the finding that "since his discipline in 2013, none of [Wills'] subsequent infractions warranted more severe discipline until the Respondent discharged Wills on July 6." (D. 29, L. 42-44), as such finding is contrary to the record as a whole and contrary to established Board law. (Tr. 29-30, 244-56, 661, 719-20, 360, 347, 734-35, 736-38, 740, 762, 748, 644, 600-01, 692-93, 800.) (RX 1, 2, 4, 6, 17, 18, 19, 25; GCX 5, 6, 11, 18.)

21. To the finding that "[a]fter the February 22 final warning, Wills was disrespectful and failed to follow company policy on a number of occasions without being subjected to further discipline", (D. 31, L. 32-34), as such finding is contrary to the record as a whole and contrary to established Board law. (Tr. 29-30, 244-56, 661, 719-20, 360, 347, 734-35, 736-38, 740, 762, 748, 644, 600-01, 692-93, 800.) (RX 1, 2, 4, 6, 9, 10, 12, 24, 27, 32, 17, 18, 19, 25; GCX 5, 6, 11, 18.)

22. To the finding that "despite [Wills'] disciplinary history, none of the infractions, taken separately or together since 2013, warranted the discharge of Wills", (D.30, L.1-2), as such finding is contrary to the record as a whole and contrary to established Board law. (Tr. 29-30, 244-56, 661, 719-20, 360, 347, 734-35, 736-38, 740, 762, 748, 644, 600-01, 692-93, 800, 818-19.) (RX 1, 2, 4, 6, 17, 18, 19, 25; GCX 5, 6, 11, 18.)

23. To the finding and conclusion that "[i]t is undisputed that the threat to Zimmerman allegedly made by Wills during the Starz presentation did not play a factor in his discharge", (D. 30, L. 8-9), as such finding is contrary to the record as a whole and contrary to established Board law. (Tr. 607-09, 688-89, 743, 787-88, 791, 794.) (RX. 28.)

24. To the finding and conclusion that Human Resources Business Partner "Courtney, after being provided the information on the Starz incident, did not believe the Respondent should suspend Wills, let alone discharged", (D. 30), as such finding and conclusion is contrary to the record as a whole, and further ignores record evidence that suspensions were not part of the Company's progressive discipline process. (Tr. 688-89, 791.) (GCX. 22.)

25. To the finding and conclusion that Wills had a "clean slate" one year after his final warning on October 22, 2014, (D. 30), as the ALJ inserted the term "clean slate" in the record, (D. 30), and such finding and conclusion is contrary to the record as a whole. (Tr. 691-92, 818-19.)

26. To the finding "that [Wills] was able to pay attention even though he was on the phone", (D. 17, L. 19-20), as such finding is contrary to the record as a whole and contrary to Board law. (Tr. 231, 600-08, 681, 745, 796-97.)

27. To the finding that Wills "put the phone on his lap on his own volition after his second interaction with Zimmermann," (D. 16, L. 44-45), as such finding is contrary to the record as a whole. (Tr. 231, 201-202, 204-05, 207, 600-08, 745, 790, 799.) (RX. 14, 15; GCX 10.)

28. To the finding and conclusion that "it was obvious that Wills was upset that he was required to place his phone down and listen to the Starz presentation while some of the representatives were using their phones and iPad and not cautioned to stop by a supervisor", (D. 17, L. 12-14), as such finding and conclusion is contrary to the record as a whole. (Tr. 231, 600-08, 745, 429, 430-31, 378, 440.) (RX. 14, 15; GCX 10.)

29. To the finding to "credit the testimony of Wills when he testified that he had in fact placed his phone on his lap and turned to face the Starz" presenters, (D. 30, L. 37-39), as such finding and conclusion is contrary to the record as a whole. (Tr. 231, 201-202, 204-05, 207, 600-08, 745, 790, 799.) (RX. 14, 15; GCX 10.)

30. To the finding and conclusion that "[i]t is my opinion that Zimmermann never instructed Wills to put away his phone", (D. 30, L. 31-45), as such conclusion is contrary to the record as a whole. (Tr. 231, 600-08, 745.)

31. To the finding that "Wills could not have been insubordinate to Zimmermann", (D. 30, L. 31-45), as such finding is contrary to the record as a whole and established Board law. (Tr. 231, 201-202, 204-05, 207, 600-08, 681, 745, 797-98.) (RX. 14, 15; GCX 10.)

32. To the finding and conclusion that "[a]t most Wills was, more likely than not, disrespectful to Zimmermann when he raised his phone to take a picture of Zimmermann allegedly using his phone", (D. 31; L. 9-10), as such conclusion is contrary to the record as a whole and contrary to established Board law. (Tr. 231, 201-202, 204-05, 207, 600-08, 681, 745, 797-98.) (RX. 14, 15; GCX 10.)

33. To the finding and conclusion that "acting in a disrespectful manner towards a supervisor would not have justified the Respondent discharging Wills", (D. 31; L. 14-16), as such

finding and conclusion is contrary to the record as a whole and contrary to established Board law. (Tr. 231, 745, 600-08, 800.)

34. To the finding and conclusion "that there is sufficient evidence of indirect animus based upon the manner the Respondent treated Wills' discharge", (D. 33, L. fn. 10), as such finding and conclusion is contrary to the record as a whole and contrary to established Board law. (*See* Exceptions 8-34.)

35. To the language in the Appendix, Notice to Employees, that Respondent will not "threaten to discipline or discharge or otherwise discriminate against you", as there is no allegation in the Complaint that Respondent engaged in unlawful threats, and such remedy is contrary to established Board law. (GCX 1(H), 1(L).)

36. To the ALJ as an "Officer of the United States" not having been appointed in accordance with the Appointments Clause of the United States Constitution as required by recent Supreme Court authority. (GCX 1(O).)

CONCLUSION

For the foregoing reasons, and the reasons set forth in Respondent's Brief in Support of Exceptions, the Board should sustain the Respondent's exceptions and dismiss the Complaint in its entirety.

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